REMARKS

Upon entry of the foregoing amendments, claims 7, 8, 10, 13-22, 25-47 and 49-61 are under consideration. Claim1 1, 7, 10, 21 and 26 have been amended. Claims 2-6, 8. 9, 11, 12, 23, 24 and 48 have been canceled. No new matter has been added.

I. Specification

The specification has been objected to for lack of an abstract. Applicants have amended the specification to include the abstract as originally filed in the priority document. Accordingly no new matter has been added.

The specification has been objected to because of a typographical error on page 51. Applicants have amended the specification to correct the error.

III. Claims Objections

Claim 26 has been amended to correct the spelling error.

II. Claim Rejections-35 U.S.C. § 102

Claim 5 was withdrawn from consideration pursuant to 37 CFR 1.142(b). Claims 1-6, and 7-61 have been rejected under 35 U.S.C. § 102 as being anticipated by Harper et al. (WO 2002/16655) in light of Harper et al. Genbank Database. Accession No. AX510060, WO 2002/16655: SEQ ID NO:2071, and Harper et al. Genbank Database. Accession No.AX507376 WO 2002/16655: SEQ ID NO:4755, all published 28 Feb. 2002.

Harper discloses a 487 base pair nucleic acid sequence (SEQ ID NO:4755) that comprises the sequence of applicants SEQ ID NO:5. The amended claims attached herein currently claim an isolated nucleic acid sequence consisting (emphasis added) SEQ ID NO:5 or an isolated nucleic acid sequence less than 487 base pairs (emphasis added) in length comprising (emphasis added) SEQ ID NO:5 and requires that the claimed sequence has promoter activity, in that it will regulate constitutive transcription of an operably linked nucleotide sequence. With respect to SEQ ID NO:4755, there is nothing in Harper et al. that discloses anything less than the 487 base pair sequence of SEQ ID NO:4755 in its entirety as having promoter activity. Additionally,

Harper et al. discloses that SEQ ID NO:4755 will function as a promoter in response to an abiotic stress (Harper et al. page 4, lines 3-5)-- an inducible promoter. In contrast, the claims as amended require that the nucleic acid has constitutive promoter activity. Accordingly, Applicants assert that Harper does not anticipate claim 1 as amended or the claims that depend therefrom.

The Examiner points out that the final six nucleotides of Applicants SEQ ID NO:5 (atg-gcg) also form the first two codons of the sequence in Harper et al. identified as SEQ ID NO:2071. Applicants note that the 3' terminal sequence of SEQ ID NO:5 (CCATGGCG) represents a restriction site for the NcoI (CCATGG) enzyme. This finds convenient use in operably linking the promoter sequence to a sequence of interest to be expressed.

Applicants request that this rejection be withdrawn.

CONCLUSION

Applicants believe that the claims, as amended, are in condition for allowance. If the Examiner has any questions, the Examiner is invited to contact the undersigned by telephone.

Respectfully submitted,

Ivor R. Elrifi, Reg. No. 39,529
Cynthia Kozakiewicz, Reg. No. 42,764
Attorneys for Applicant
c/o MINTZ, LEVIN
Tel: (617) 542 6000
Fax: (617) 542 2241
Customer No. 30623

Dated: October 11, 2007